IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION

UNITED STATES OF AMERICA	)	
	)	
	)	Case No. 2:19CR00006-001
	)	
v.	)	**OPINION AND ORDER**
	)	
TRAVIS LEE PENNINGTON,	)	By: James P. Jones
	)	United States District Judge
Defendant.	)	

Travis Lee Pennington, Pro Se.

The defendant, sentenced by this court on February 7, 2020, has filed a pro se motion seeking to correct his sentence under Federal Rule of Criminal Procedure 35(a). He contends that the court committed clear error in calculating his Criminal History Category because one of the prior sentences used to calculate that category had been found to be attributable to someone else, and not him.

Even if Rule 35(a) could be used to correct the defendant's sentence for the reason stated, the defendant is incorrect in his assumption. It is true that the Probation Officer initially attributed the prior sentence in question to the defendant in the first version of the Presentence Investigation Report (PSR) released to the parties, but upon objection by the defendant's counsel, the Probation Officer corrected the report, as noted in his Addendum to the PSR, and the final version of

the PSR received by the court before the sentencing hearing did not contain the prior sentence in question. Thus, the sentence complained of was not counted in the scoring of the defendant's Criminal History Category.[1]

For these reasons, it is **ORDERED** that the defendant's motion, ECF No. 795, is DENIED.

ENTER: February 24, 2020

/s/ JAMES P. JONES
United States District Judge

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[1] As noted in the Addendum to the PSR, the defendant objected to former paragraph 341, stating that the defendant was not convicted of shoplifting "as it was Travis M. Pennington, not the defendant Travis Lee Pennington." PSR Addendum, ECF No. 749. The Probation Officer replied, "After checking the court records, the defendant is correct and said conviction will be removed from the report." *Id.* No shoplifting conviction was used to calculate the defendant's Criminal History Category.